

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 24412 of 2005(F)

PETITIONER:

SUBAIRKUTTY, S/O.MUHAMMED KUNJU,
KOTTAKKAKATHU THEKKETHIL, VALATHUNGAL CHERRY,
VALATHUNGAL P.O. ERAVIPURAM, KOLLAM.

BY ADV. SRI.K.S.MANU

RESPONDENTS:

1. AZEEMA, MANOJ MANZIL, VALATHUNGAL CHERI,
VALATHUNAL P.O. ERAVIPURAM.
2. NOWSHAD, DO. DO.
3. MINI, DO. DO.
4. RAJI, DO. DO.
5. MANOJ, DO. DO.
6. SONY, DO. DO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 24412 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER DT.26.7.04 IN IA NO.3302 OF 2003 IN OS NO.728 OF 1995 ON THE FILE OF ADDL. SUB COURT, KOLLAM.

EXT.P2 : TRUE COPY OF THE ORDER DT.13.8.04 IN IA NO.3302 OF 2003 IN OS NO.728 OF 1995 ON THE FILE OF ADDL. SUB COURT, KOLLAM.

EXT.P3 : TRUE COPY OF THE ORDER DT.16.7.05 IN CMA NO.68 OF 2004 OF THE ADDL. DISTRICT COURT, KOLLAM.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 24412 OF 2005

Dated this the 11th day of June, 2007

JUDGMENT

Notice to 3rd respondent is returned as 'unclaimed'. Notice on 3rd respondent is declared sufficient. Service is complete and there is no appearance for the respondents. The petitioner-defendant is aggrieved by the heavy cost which was imposed by the learned Subordinate judge while passing Ext.P1 order, allowing the application filed by him to set aside the ex-parte decree. Learned counsel for the petitioner Mr.K.S. Manu, submits that the learned Subordinate Judge was not at all justified in imposing heavy cost of Rs.5,000/- since no objections were filed by the plaintiff . I find some merit in the above submission. At the same time I am not inclined to agree with the learned counsel who says that the application should have been allowed without imposing any condition. The Writ Petition will stand disposed of in the following terms:

Ext.P1 will stand modified to the extent of reducing the cost presently ordered by the Subordinate Judge from Rs.5,000/- to Rs.1,500/-. If the sum of Rs.5,000/- is already deposited, the learned Subordinate Judge will permit the petitioner to withdraw a sum of

Rs.3,500/- out of the same and will permit the plaintiff to withdraw only the balance.

PIUS C. KURIAKOSE, JUDGE

btt

